

Regulatory Improvement:

A Progress Report for the Department of Health and State Board of Health

**Required by Executive Order 97-02
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Executive Summary

This report details the Washington State Department of Health and State Board of Health's efforts to review the policies and interpretive statements as required by the Governor's Executive Order 97-02. In 1997, the department identified 2,314 sections of rule as controversial or having significant impact on business, labor, consumers, or the environment. This constitutes over 80 percent of the department's regulations. The Board of Health committed to reviewing 413 sections of rule—98 percent of the board's regulations. In addition, the department committed to reviewing 401 policies and interpretive statements, while the board committed to reviewing 41 policies and interpretive statements.

The State Board of Health and Department of Health are on target for completing rules scheduled for review. The following are some of the accomplishments resulting from the review:

- ❖ The department has reviewed 2181 sections of rule, 93 percent of its commitment. The department will complete reviews on an additional 167 sections by the end of 2001.
- ❖ The board has reviewed 398 sections of rule, 96 percent of its commitment. The board will complete its review of the remaining regulations by the end of the year.
- ❖ Since 1997, the department has eliminated 270 pages of administrative code and the board has eliminated 34 pages.
- ❖ The department has eliminated 604 sections of rule while the board has eliminated 68 sections of rule.

In addition to these accomplishments, the department and board have made substantive improvements to existing rules, including rule consolidation, process improvement, improved clarity, and increased public involvement. The board and department have worked to improve the coordination with other agencies to clarify roles and reduce administrative and regulatory redundancy.

Since the last report the department received no petitions. The board, however received one petition. The board denied the petition and the petitioner worked with his professional association to submit a legislative proposal which would specifically exempt the industry from food worker permits. The bill passed, however the Governor vetoed the bill.

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Introduction

In March 1997, Governor Locke issued Executive Order 97-02, which required agencies to review by 2001, rules that are controversial or impose significant impacts on business, labor, consumers and the environment. The Executive Order outlined certain criteria for agencies to consider when reviewing regulations. These criteria include:

- Need and reasonableness;
- Effectiveness and efficiency;
- Stakeholder involvement;
- Coordination among regulatory agencies; and
- Consistency with legislative intent and statutory authority.

Additionally, the Executive Order required agencies to review existing policies, interpretive statements and similar documents to determine whether they belong in rule. All agencies are required to report their progress annually.

This report details the progress on the regulatory review of the State Board of Health and the Department of Health rules. Section I describes the unique regulatory and administrative relationship between the board and the department. Section II outlines board accomplishments resulting from the review and depicts the board's progress in meeting timelines and summarizes petitions for amendment or repeal of rules. Section III describes the department's accomplishments and progress in completing the review, and summarizes the department's response to petitions for rule amendment. Section IV recommends need for amending certain statutes as an outcome of the rule review.

Section I-- The State Board of Health and Department of Health: Working Together to Improve the Health of Washington State Residents

The State Board of Health and Department of Health have a unique relationship in the development of health policy and health regulations. The secretary is a member of the board. The board has statutory authority to adopt many regulations that the department implements and enforces. The board also has statutory authority over regulations that are implemented or enforced by other entities, including local health jurisdictions, private health care providers, police, private businesses, citizens and others. Department program staff collaborate with board members and staff in the development of many Board of Health regulations. The board may elect to delegate its rule-making authority to the department. For a few chapters of rule, while statutory authority for rules is borne primarily by the board, the department has some authority. Such shared responsibility and partnership in rule development include:

- Food safety
- Commercial shellfish operations
- Drinking water systems
- HIV/AIDS
- Infectious and Non-infectious disease prevention, control, and surveillance
- Prenatal screening standards
- Transient accommodations (Hotels and Motels)

In addition, the board makes recommendations to the secretary on how to involve the public and professional community in the department's public health policy formulation. The board provides an important public forum for the development of public health policy in Washington state. The department's role in implementing and enforcing the board rules provides valuable technical and administrative expertise for the board through this unique partnership.

With regard to the Executive Order review, department program staff review board rules and report their findings to the board. The board considers the department's recommendations and amends or repeals rules that do not meet the order criteria. This partnership results in an efficient rule review process that is rich in public participation.

Section II-- State Board of Health Accomplishments

In 1997, the board made the commitment to review 413 sections of rule. This number was reduced to 403 when the legislature transferred the authority for the Temporary Worker Housing program to the department. To date, reviews have been completed on 398 sections of rule (96 percent). Of the sections reviewed, the board has amended 92 sections, and repealed 68 sections. Board action has resulted in the elimination of 34 pages of administrative code. All remaining sections will be reviewed by the end of this year.

The board also made the commitment to review 43 policies, interpretive statements and other documents. Reviews have been completed on all of these documents. As a result of this review, 2 policies were adopted into rule, 4 were amended, 32 were retained and 5 were rescinded.

The amendments to existing rules, and adoption of new rules under the executive order have resulted in rules that are easier to use and understand for the regulated community. In addition to the overall improvement of regulations, one of the key outcomes of the Executive Order is the impact the review has had on the improving the coordination of rule development between the department of health and the board of health. The following information provides examples of real regulatory improvement under the executive order.

Interagency Coordination Improves Clarity and Streamlines Rules

❖ *Supporting Coordinated Policy Development through Improved Processes and Communication*

During the last two years of the executive order review, the board worked to develop its strategic plan and prioritize its work. At the same time the department updated its internal rules process. Both of these processes identified a shared issue--the need for better coordination and communication between the board and the department. In an effort to meet this need, the board began assigning board members as sponsors to specific rule review and development projects. The sponsors serve as lead board members for the following priority policy areas:

- Access to Critical Health Services
- Children's Health and Well-being
- Health Disparities
- Genetics
- Environmental Health
- Public Health Partnership
- 2002 Health Report

The discussions between the board and department resulted in a revised Board of Health rules process and improved overall coordination and communication. Under the new board process, the board staff works with department staff early in the rules development process to identify specific issues that need to be addressed through amendments. This early work helps the department develop a recommendation for action that is presented to the board. The board then determines the direction for the rules process, including the depth of potential changes, identification of stakeholder issues, and

specific policy concerns. Based on this discussion, the board determines how actively it will be involved in the process—at the highest level, a board sponsor and staff person drive the rule change, at the lowest level, the board may decide to delegate the rule. This process facilitates better communication and coordination in policy development. More importantly, it enables the board to use its limited resources to focus on the most critical issues, and those that best align with board priorities.

❖ ***Reviewing Rules for Adequacy and Responsiveness-- Newborn Screening***

The board is currently reviewing the Newborn Screening rules to determine which disorders, if any, should be added to the mandatory dried blood spot screening. This work is part of the board's initiative on children's health and well-being. One outcome of the review will be advice to help determine whether adding additional disorders to the panel will further prevent illness and death through early detection and treatment of affected newborns. One of the challenges to this process will be balancing the issues and concerns raised by the many individuals and organizations that are interested in this process.

Another issue surrounding this rules revision is assuring patient privacy. Accordingly, the Board is examining the adequacy of existing privacy protections for the dried blood spot samples the department retains as part of the Newborn Screening Program on every baby born in Washington since the mid 1960s. That examination will occur as part of a separate, but closely related policy development project known as the Board's Genetics Task Force.

The Board convened a broad based Genetics Task Force as required by the legislature this year to examine issues of privacy and the use of DNA and information derived from DNA testing. Under the terms of the Board's approved work plan for the Task Force, it will consider the adequacy of current privacy rules governing the storage, retrieval and use of these dried blood spot samples. The Task Force is uniquely constituted to be an excellent source of advice to the Board as it considers changes to its existing rules providing privacy protection to that database.

Petitions

The Board of Health received one petition for rulemaking during this reporting period. The petition, from the Adult Family Home Association, requested that the Board repeal WAC 246-217-010, Food Worker Cards, Definitions. The appeal was based on the contention that the department failed to follow the Administrative Procedures Act (APA), Chapter 34.05 RCW, requirements for notification of stakeholders and the Regulatory Fairness Act, Chapter 19.85 RCW, for preparing a small business economic impact statement.

After reviewing the petition the department recommended that the board deny the petition. The board decided to deny the petition, after it found that repealing that section would make the remaining rule unclear, since the section provides all of the definitions of those who are required to follow the food worker permit requirements. The board also determined that food worker training was important to protect public health, particularly in settings that serve vulnerable populations, such as adult family homes.

When Governor Locke vetoed legislation that would have created an alternative to the board's required training regime for adult family home staff, the board acted quickly to work with department staff and Department of Social and Health Services staff to notify adult family home operators, local health jurisdictions and other interested parties of the need to remain vigilant in assuring compliance with existing food worker training requirements in those settings.

Section III-- Department of Health Review Accomplishments

In 1997, the department committed to reviewing 2314 sections of rule. The number of sections that the department committed to review increased to 2348 this year. Since March 1997, the department has completed reviews on 2181 sections of rule (93 percent). By the end of this year, the department will finish reviewing the remaining 167 sections. Of the sections reviewed, the department amended 896 sections, and repealed 604 sections. The department's efforts have resulted in the elimination of approximately 270 pages of administrative code.

The department's review of 401 interpretive statements, policies and other documents was completed last year. Of these, 46 were adopted into rule, 84 were amended, 247 were retained and 24 were repealed. The reviews for the remaining 23 policies, interpretive statements or other documents will be completed when the rules associated with these documents are reviewed.

A key outcome of the Executive Order is the review's impact on the department's regulations. The Order caused staff to critically evaluate the intent and content of the rules. Rules that are adopted under the executive order criteria are clearer, more effective, efficient, and better coordinated within and outside of the agency. The following are examples of real regulatory improvement under the executive order.

Eliminating Regulatory Overlap Through Interagency and Stakeholder Coordination

❖ *Improving Clarity and Usability of Rules—Environmental Health Programs*

From time to time, the State Board of Health may choose to delegate certain rule changes to the department. One of these rules was Chapter 246-205 WAC—Clandestine Drug Labs. This chapter was revised to address clarity and usability issues identified through the rule review as well as to incorporate new statutory mandates. Through many workshops and public participation meetings, program and regulatory staff worked diligently with local health and environmental health officials to address this on going and growing public health concern. This revision required coordination with local health officials, law enforcement, Departments of Ecology and Labor & Industry, contractors, and homeowners. The department anticipates adopting the final rule in December 2001.

Another rule that the board delegated to the department was Chapter 246-290 WAC, Public Water Supplies. This chapter was revised to clarify and implement new federal regulations about the Consumer Confidence Report. These rules require that consumers be notified annually about the quality of their water and the results of certain tests. Broad based notification about the rule revision was distributed through the Drinking Water publication, "Water Tap". Groups such as the Water Supply Advisory Committee, Washington Water Utility Council, and a new steering committee for Consumer Confidence Report met to develop a final rule. Staff held many meetings with constituents throughout the state to gather information on making the rule easier to use, inform stakeholders about the new federal requirements, and to assist with meeting the requirements. The final rule, WAC 246-290-72001-2, adopted July 2000, is the result of tremendous coordination with stakeholders and USEPA. These efforts resulted in a clearer and easier to use rule than the original federal language the Department must implement.

Facilitating Collaboration and Consensus with Regulated Parties

❖ *Improving Access to Health Care—Health Professions Quality Assurance*

In 2000, the legislature authorized completion of prescriptive authority for Advanced Registered Nurse Practitioners (ARNP). The law allowed ARNPs to prescribe Schedule II, III, and IV drugs if they have a joint practice arrangement with a physician. The law required the rules to be jointly adopted by the Nursing Care Quality Assurance Commission, the Medical Care Quality Assurance Commission and the Board of Osteopathic Medicine and Surgery to describe the joint practice arrangement.

The rules allow physicians and ARNPs to enter into collaboration by filing their joint practice arrangements with the Nursing Care Quality Assurance Commission. Enabling ARNPs to prescribe Schedule II-IV drugs increases the public's access to health care, particularly in rural areas, where there are fewer health practitioners available to the public.

Department staff worked closely with the three regulatory authorities to create a proposal that all three professions could support. The process included many public meetings, as well as a jointly held public hearing facilitated by the department.

Streamlining Standards and Improving Uniformity

❖ *Improving Quality and Consistency-- Emergency Medical Systems and Trauma Care*

The department is committed to regularly reviewing the Emergency Medical Systems and Trauma Care System rules. As a result of the recent rule review, Washington's pre-hospital training standards now conform to current national standards. The amendments corrected inconsistencies in the educational curriculums between the various levels, and revised and updated equipment requirements, most specifically requiring defibrillation capabilities on all in-service, licensed aid vehicles and ambulances.

Other changes that improve consistency with national standards, system responsiveness, and quality of care include:

- Requiring all verified aid and ambulance services to provide 24-hour service.
- Conforming Washington's air ambulance standards to national standards by requiring accreditation by the Commission on Accreditation of Medical Transport Systems.
- Aligning Washington's standards of designating all trauma care facilities with current national consensus codes adopted by the American College of Surgeons (Committee on Trauma) and the Commission on Accreditation of Rehabilitation Facilities and have ensured that lower levels of designation do not have stricter standards than higher levels.
- Refining equipment and education requirements, and "response times" for providers in all levels of care.

Petitions

The department received no petitions for rulemaking since last year's report.

Section IV-- Recommendations for Statutory Change

The department recommends an evaluation of the Administrative Procedures Act to determine where the standards can be clarified and improved. Ensuring that the legal standards for rule development are clear is a key part of improving Washington state regulations. The Administrative Procedures Act has undergone a great deal of change during the last five years. As a result, some of the standards for rule development are no longer clear, while others have not kept pace with the changes in technology. The department recommends an evaluation of the Administrative Procedures Act to determine where the standards can be clarified and improved.

The department has identified one chapter of RCW that needs to be repealed. Chapter 70.50 RCW creates the office of the State Otologist. This chapter was transferred to the department when it was created in 1989, however it appears that the position was never funded. Many of the functions of this position are carried out through the work of the department, the Board of Health and the Office of the Superintendent of Public Instruction. The screening requirements are addressed through the board of health auditory and visual rules, chapter 246-760 WAC.

Continuing Regulatory Improvement

By the end of the year, the executive order review will result in the review of almost 2752 sections of rule. The department and board remain committed to improving existing regulations and assuring that new regulations meet all of the Executive Order criteria. This commitment is reflected in the integration of the criteria into the rule development process requirements used by the department and board.

In addition, the board and department will maintain the high standard of public involvement in the rules process. Stakeholder contributions throughout the rule review results in rules that are clearer, more efficient, consistent, and reasonable. Stakeholder involvement also helps shape policy and standards that are responsive to rapidly changing technology and the needs of Washington state citizens, without compromising necessary levels of public health protection.